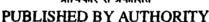


असाधारण **EXTRAORDINARY** भाग ॥-खण्ड 2 PART II-Section 2 प्राधिकार से प्रकाशित







No. 111

नई दिल्ली, बुधवार, जून 3, 1998 / ज्येष्ट 13, 1920

NEW DELHI, WEDNESDAY, JUNE 3, 1998 / JYAISHTA 13, 1920

इस भाग में भिन्न पुष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

These Bills were introduced in Lok Sabha on 3-6-98.

BILL No. 45 of 1998

A Bill to provide for the establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalization of electricity tariff, transparent policies regarding subsidies, promotion of efficient and environmentally benign policies and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows :--

CHAPTER 1

PRELIMINARY

- 1. (1) This Act may be called the Electricity Regulatory Commissions Act, 1998.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall be deemed to have come into force on the 25th day of April, 1998.

Short title, extent and commencement.

Definitions

- 2. In this Act, unless the context otherwise requires,—
- (a) "Central Commission" means the Central Electricity Regulatory Commission established under sub-section (1) of section 3;
 - (b) "Chairperson" means the Chairperson of the Commission;
- (c) "Commission" means the Central Commission or the State Commission, as the case may be;
 - (d) "High Court" means-
 - (i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
 - (ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents ordinarily resides or carries on business or personally works for gain;
 - (e) "inter-State transmission" includes-
 - (i) the conveyance of energy by means of a main transmission line from the territory of one State to the territory of another State;
 - (ii) the conveyance of energy across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of energy;
 - (iii) the transmission of energy within the territory on a system built, owned, operated, maintained or controlled by a central transmission utility or by any person under the supervision and control of a central transmission utility;
- (f) "licensee" means a person licensed under Part II of the Indian Electricity Act, 1910 to supply energy or a person who has obtained sanction under section 28 of that Act to engage in the business of supplying energy (but does not include the Board or a Generating company.)";

9 of 1910

- (g) "Member" means the Member of the Commission and includes the Chairperson but does not include a Member, ex officio;
 - (h) "prescribed" means prescribed by rules made under this Act;
 - (i) "regulations" means regulations made under this Act;
- (j) "State Commission" means the State Electricity Regulatory Commission established under sub-section (1) of section 17;
- (k) "transmission utility" means any generating company, board, licensee or other person engaged in the transmission of energy;
- (1) "utility" means any person or entity engaged in the generation, transmission, sale, distribution or supply, as the case may be, of energy;
- (m) words and expressions used and not defined in this Act but defined in the Electricity (Supply) Act, 1948 or the Indian Electricity Act, 1910 shall have the meanings respectively assigned to them in those Acts.

54 of 1948, 9 of 1910.

CHAPTER II

CENTRAL ELECTRICITY REGULATORY COMMISSION

Establishment and incorporation of Central Commission 3. (1) The Central Government shall, within three months from the date of the commenement of this Act by notification in the Official Gazette, establish a body to be known as the Central Electricity Regulatory Commission to exercise the powers conferred on, and the functions assigned to, it under this Act.

54 of 1948.

- (2) The Central Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.
- (3) The head office of the Central Commission shall be at such place as the Central Government may, by notification in the Official Gazette, specify.
 - (4) The Central Commission shall consist of the following Members, namely:-
 - (a) a Chairperson and three other Members;
 - (b) the Chairman of the Central Electricity Authority appointed under subsection (3) of section 3 of the Electricity (Supply) Act, 1948, who shall be the Member, ex officio.
- (5) The Chairperson and the other Members of the Central Commission shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in section 5:

Provided that nothing contained in this sub-section shall apply to the appointment of a person as the Chairperson, where such person is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

4. (1) The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge, experience or shown capacity in dealing with problems relating to engineering, law, economics, commerce, finance or management and shall be appointed in the following manner, namely:—

Qualification for appointment of Chairperson and other Members of Central Commission.

- (a) one person having qualification and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity;
 - (b) one person having qualification and experience in the field of finance; and
- (c) two persons having qualification and experience in the field of economics, commerce, law or management:

Provided that not more than one Member shall be appointed under the same category under clause (c)

(2) Notwithstanding anything contained in sub-section (1), the Central Government may appoint any person as the Chairperson from amongst persons who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India.

- (3) The Chairperson or any other Member of the Central Commission shall not hold any other office.
 - (4) The Chairperson shall be the Chief Executive of the Central Commission.
- 5. (1) The Central Government shall, for the purpose of sub-section (5) of section 3, constitute a Selection Committee consisting of—

nstitute a Selection Committee consisting of—

(a) Member of the Planning Commission incharge of

--Chairperson;

-Member:

-Member:

---Member:

-Member:

- the energy sector(b) Secretary-in-charge of the Ministry of the Central
 - Government dealing with the Department of Legal Affairs
- (c) Chairman of the Public Enterprises Selection Board
- (d) a person to be nominated by the Central Government in accordance with sub-section (2)
- (e) a person to be nominated by the Central Government in accordance with sub-section (3)
- (f) Secretary-in-charge of the Ministry of the Central Government dealing with Power

---Member,

Constitution of Selection Committee to recommend Members.

(2) For the purposes of clause (d) of sub-section (1), the Central Government shall nominate from amongst persons holding the post of Chairman or Managing Director, by whatever name called, of any public financial institution specified in section 4A of the Companies Act, 1956.

l of 1956.

- (3) For the purposes of clause (e) of sub-section (1), the Central Government shall nominate from amongst persons holding the post of Director or the head of the institution, by whatever name called, of any research, technical or management institution notified by the Central Government in the Official Gazette for this purpose.
- (4) Secretary-in-charge of the Ministry of the Central Government dealing with Power shall be the Convenor of the Selection Committee.
- (5) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or end of tenure of any Chairperson or Member, make a reference to the Selection Committee for filling up of the vacancy.
- (6) The Selection Committee shall finalise the selection of the Chairperson and Members within one month from the date on which the reference is made to it.
- (7) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.
- (8) Before recommending any person for appointment as a Chairperson or other Member of the Central Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as a Member.
- (9) No appointment of the Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee.
- 6. (1) The Chairperson or other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall not be eligible for reappointment:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

- (a) in the case of the Chairperson, the age of sixty-five years; and
- (b) in the case of any other Member, the age of sixty-two years.
- (2) The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed.
- (3) The salary, allowances and other conditions of service of the Chairperson and other Members shall not be varied to their disadvantage after appointment.
- (4) The Chairperson and every Member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form and in such manner and before such authority as may be prescribed.
- (5) Notwithstanding anything contained in sub-section (1), the Chairperson or any Member may—
 - (a) relinquish his office by giving in writing to the President notice of not less than three months; or
 - (b) be removed from his office in accordance with the provisions of section 7.
 - (6) The Chairperson or any Member ceasing to hold office as such shall—
 - (a) be ineligible for further employment under the Central Government or any State Government for a period of two years from the date he ceases to hold such office;

Term of office, salary and allowances and other conditions of service of Chairperson and Members.

- (b) not accept any commercial employment for a period of two years from the date he ceases to hold such office; and
- (c) not represent any person before the Central Commission or a State Commission in any manner.

Explanation.— For the purposes of this sub-section,—

- (i) "employment under the Central Government or the State Government" includes employment under any local or other authority within the territory of India or under the control of the Central Government or State Government or under any corporation or society owned or controlled by the Government.
- (ii) "commercial employment" means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in the electricity industry and includes also a director of a company or partner of a firm and it also includes setting up practice either independently or as partner of a firm or as an adviser or a consultant.
- 7. (1) Subject to the provisions of sub-section (3), any Member of the Central Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry, held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Member, ought on any such ground to be removed.

Removal of Members.

- (2) The President may suspend any Member of the Central Commission in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed order on receipt of the report of the Supreme Court.
- (3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chairperson or any other Member, if the Chairperson or such other Member, as the case may be,—
 - (a) has been adjudged an insolvent; or
 - (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
 - (c) has become physically or mentally incapable of acting as a Member; or
 - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest.
- (4) Notwithstanding anything contained in sub-section (3), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the President, has, on an inquiry, held by it in accordance with such procedure as prescribed in this behalf by the Supreme Court, reported that the Member ought on such ground or grounds to be removed.
- & (1) The Central Commission may appoint a Secretary to exercise and perform under the control of the Chairperson such duties and powers as may be specified by regulations made by the Central Commission.

Officers of Central Commission and oher staff.

- (2) The Central Commission may, with the approval of the Central Government, determine the number, nature and categories of other officers and employees required to assist the Central Commission in the discharge of its functions.
- (3) The salaries and allowances payable to, and other conditions of service of, the Secretary, officers and other employees shall be such as may be determined with the approval of the Central Government, by regulations.

(4) The Central Commission may appoint consultants required to assist the Central Commission in the discharge of its functions on the terms and conditions as may be determined by regulations made by the Central Commission

Proceedings of Central Commission.

Vacancies, etc., not to

proceedings of Central Commission. Expenses of

Commission to

be charged on Consolidated Fund of India. Powers of

invalidate

Central

Central

Commission.

- 9. (1) The Central Commission shall meet at the head office or any of its offices at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be determined by regulations.
- (2) The Chairperson or, if he is unable to attend a meeting of the Central Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from among themselves, shall preside at the meeting.
- (3) All questions which come up before any meeting of the Central Commission shall be decided by a majority of votes of the Members (including the Member, ex officio) present and voting, and in the event of an equality of votes, the Chairperson or the person presiding shall have the right to exercise a second or casting vote.
 - (4) Save as otherwise provided in sub-section (3), every Member shall have one vote.
- (5) All orders and decisions of the Central Commission shall be authenticated by the Secretary or any other officer of the Central Commission duly authorised by the Chairperson in this behalf.
- 10. No act or proceedings of the Central Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Central Commission.

11. The expenses of the Central Commission including all salaries and allowances

payable to, or in respect of, the Chairperson and the Members of the Central Commission shall be charged upon the Consolidated Fund of India.

12. The Central Commission, shall, for the purposes of any inquiry or proceedings under this Act have the powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

5 of 1908.

- (a) the summoning and enforcing the attendance of any witness and examining him on oath:
- (b) the discovery and production of any document or other material object producible as evidence;
 - (c) the reception of evidence on affidavits;
 - (d) the requisition of any public record;
 - (e) the issue of commission for examination of witnesses;
 - (f) review its decisions, directions and orders;
 - (g) any other matter which may be prescribed.

CHAPTER III

POWERS AND FUNCTIONS OF THE CENTRAL COMMISSION

Functions of Central Commission.

- 13. The Central Commission shall discharge all or any of the following functions, namely:—
 - (a) to regulate the tariff of generating companies owned or controlled by the Central Government;

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- (b) to regulate the tariff of generating companies, other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
- (c) to regulate the inter-State transmission of energy including tariff of the transmission utilities;
- (d) to promote competition, efficiency and economy in the activities of the electricity industry;
- (e) to aid and advise the Central Government in the formulation of tariff policy which shall be--
 - (i) fair to the consumers; and
 - (ii) facilitate mobilisation of adequate resources for the power sector;
- (f) to associate with the environmental regulatory agencies to develop appropriate policies and procedures for environmental regulation of the power sector;
 - (g) to frame guidelines in matters relating to electricity tariff;
- (h) to arbitrate or adjudicate upon disputes involving generating companies or transmission utilities in regard to matters connected with clauses (a) to (c) above;
- (i) to aid and advise the Central Government on any other matter referred to the Central Commission by that Government.
- 14. (1) The Central Commission may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the Central Advisory Committee.

Central Advisory Committee.

- (2) The Central Advisory Committee shall consist of not more than thirty-one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the energy sector.
- (3) The Chairperson and Members of the Central Commission shall be the ex officio Chairperson and ex officio Members of the Central Advisory Committee.
- 15. The objects of the Central Advisory Committee shall be to advise the Central Commission on,—

Objects of Central Advisory Committee.

- (i) major questions of policy;
- (ii) matters relating to quality, continuity and extent of service provided by the licensees;
- (iii) compliance by the licensees with the conditions and requirements of their licence;
 - (iv) protection of consumer interest; and
 - (v) energy supply and overall standards of performance by utilities.
- 16. (1) Any person aggrieved by any decision or order of the Central Commission may file an appeal to the High Court.

Appeal to High Court in certain cases.

- (2) Except as aforesaid, no appeal or revision shall lie to any court from any decision or order of the Central Commission.
- (3) Every appeal under this section shall be preferred within sixty days from the date of communication of the decision or order of the Central Commission to the person aggrieved by the said decision or order:

Provided that the High Court may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that the aggrieved person had sufficient cause for not preferring the appeal within the period of sixty days.

CHAPTER IV

STATE ELECTRICITY REGULATORY COMMISSION

Establishment and incorporation of State Commission.

Constitution of Selection

Committee by State

Covernment

- (2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.
- (3) The head office of the State Commission shall be at such place as the State Government may, by notification in the Official Gazette, specify.
- (4) The State Commission shall consist of not more than three Members including the Chairperson.
- (5) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in dealing with problems relating to engineering, finance, commerce, economics, law or management.
- (6) The Chairperson and the Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in section 18.
- (7) Notwithstanding anything contained in sub-section (5) or sub-section (6), the State Government may appoint any person as the Chairperson from amongst persons who is or has been a Judge of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that Hight Court.

- (8) The Chairperson shall be the Chief Executive of the State Commission.
- (9) The Chairperson or any other Member of the State Commission shall not hold any other office.
- 18. (1) The State Government shall, for the purposes of selecting the Members of the State Electricity Commission, constitute a Selection Committee consisting of—
 - (a) a person who has been a Judge of the Hight Court Chairperson;
 - (b) the Chief Secretary of the concerned State Member;
 - (c) the Chairperson or a Member of the Central Electricity Authority—Member:

Provided that nothing contained in this clause shall apply to the appointment of a person as the Chairperson who is or has been a Judge of the High Court.

- (2) No appointment of a Member shall be invalid merely by reason of any vacancy in the Selection Committee.
- (3) The State Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal and six months before the superannuation or end of tenure of any Chairperson or a Member, make a reference to the Selection Committee for filling up of the vacancy.
- (4) The Selection Committee shall finalise the selection of the Member, within one month from the date on which the reference is made to it.
- (5) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

Term of office, salary and

allowances and

other conditions of

service of

Chairperson and Members

- (6) Before recommending any person for appointment as a Member, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as a Member.
- 19. (1) The Chairperson or other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall not be eligible for reappointment:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

- (a) in the case of the Chairperson, the age of sixty-five years, and
- (b) in the case of any other Member, the age of sixty-two years.
- (2) The salary and allowances payable to, and the other terms and conditions of service of, the Members of the State Commission shall be such as may be prescribed by the State Government.
- (3) The salary, allowances and other conditions of service of the Members, shall not be varied to their disadvantage after appointment.
- (4) Every Member of the State Commission shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form and in such manner and before such authority as may be prescribed.
- (5) Notwithstanding anything contained in sub-section (1) or sub-section (2), a Member may—
 - (a) relinquish his office by giving in writing to the Governor notice of not less than three months; or
 - (b) be removed from his office in accordance with the provisions of section 20.
 - (6) any Member ceasing to hold office as such shall-
 - (a) be ineligible for further employment under the Central Government or any State Government for a period of two years from the date he ceases to hold such office;
 - (b) not accept any commercial employment for a period of two years from the date he ceases to hold such office; and
 - (c) not represent any person before the Central Commission or State Commission in any manner.

Explanation.—For the purposes of this sub-section,—

- (i) "employment under the Central Government or under the State Government" includes employment under any local or other authority within the territory of India or under the control of the Central Government or a State Government or under any corporation or society owned or controlled by the Government.
- (ii) "commerical employment" means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in the electricity industry and includes also a director of a company or partner of a firm and it also includes setting up practice either independently or as partner of a firm or as an adviser or a consultant.
- 20. (1) Subject to the provisions of sub-section (3), any Member of the State Commission shall only be removed from his office by order of the Governor on the ground of proved misbehaviour after the High Court, on reference being made to it by the Governor, has, on inquiry, held in accordance with the procedure prescribed in that behalf by the High Court, reported that the Member, ought on any such ground to be removed.

Removal of

Members.

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- (2) The Governor may suspend any Member of the State Commission in respect of whom a reference has been made to the High Court under sub-section (1) until the Governor has passed orders on the receipt of the report of the High Court on such reference.
- (3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office, the Member if he—
 - (a) has been adjudged an insolvent; or
 - (b) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude; or
 - (c) has become physically or mentally incapable of acting as a Member; or
 - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest.
- (4) Notwithstanding anything contained in sub-section (3), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the High Court on a reference being made to it in this behalf by the Governor, has, on an enquiry, held by it in accordance with such procedure as prescribed in this behalf by the High Court, reported that the Member ought on such ground or grounds to be removed.

Officers of State Commission and other staff.

- 21. (1) The State Commission may appoint a Secretary to exercise, and perform under the control of the Chairperson such duties and powers as may be specified by regulations made by the State Commission.
- (2) The State Commission may, with the approval of the State Government, determine the number, nature and categories of other officers and employees required to assist the State Commission in the discharge of its functions.
- (3) The salaries and allowances payable to, and other conditions of service of, the Secretary, officers and other employees shall be such as may be determined by regulations with the approval of the State Government.
- (4) The State Commission may appoint consultants required to assist the State Commission in the discharge of its functions on the terms and conditions as may be determined by regulations by the State Commission.

CHAPTER V

Powers and functions of the State Commission

Functions of State Commission.

- 22. (1) Subject to the provisions of Chapter III, the State Commission shall discharge the following functions, namely:—
 - (a) to determine the tariff for electricity, wholesale, bulk, grid or retail, as the case may be, in the manner provided in section 29;
 - (b) to determine the tariff payable for the use of the transmission facilities in the manner provided in section 29;
 - (c) to regulate power purchase and procurement process of the transmission utilities and distribution utilities including the price at which the power shall be procured from the generating companies, generating stations or from other sources for transmission, sale, distribution and supply in the State;
 - (d) to promote competition, efficiency and economy in the activities of the electricity industry to achieve the objects and purposes of this Act.

- (2) Subject to the provisions of Chapter III and without prejudice to the provisions of sub-section (1), the State Government may, by notification in the Official Gazette, confer any of the following functions upon the State Commission, namely:—
 - (a) to regulate the investment approval for generation, transmission, distribution and supply of electricity to the entities operating within the State;
 - (b) to aid and advise the State Government, in matters concerning electricity generation, transmission, distribution and supply in the State;
 - (c) to regulate the operation of the power system within the State;
 - (d) to issue licences for transmission, bulk supply, distribution or supply of electricity and determine the conditions to be included in the licences;
 - (e) to regulate the working of the licensees and other persons authorised or permitted to engage in the electricity industry in the State and to promote their working in an efficient, economical and equitable manner;
 - (f) to require licensees to formulate perspective plans and schemes in coordination with others for the promotion of generation, transmission, distribution, supply and utilisation of electricity, quality of service and to devise proper power purchase and procurement process;
 - (g) to set standards for the electricity industry in the State including standards relating to quality, continuity and reliability of service;
 - (h) to promote competitiveness and make avenues for participation of private sector in the electricity industry in the State, and also to ensure a fair deal to the customers;
 - (i) to lay down and enforce safety standards;
 - (j) to aid and advise the State Government in the formulation of the State power policy;
 - (k) to collect and record information concerning the generation, transmission, distribution and utilisation of electricity;
 - (1) to collect and publish data and forecasts on the demand for, and use of, electricity in the State and to require the licences to collect and publish such data;
 - (m) to regulate the assets, properties and interest in properties concerning or related to the electricity industry in the State including the conditions governing entry into, and exit from, the electricity industry in the such manner as to safeguard the public interest;
 - (n) to adjudicate upon the disputes and differences between the licensees and utilities and to refer the matter for arbitration;
 - (o) to co-ordinate with environmental regulatory agencies and to evolve policies and procedures for appropriate environmental regulation of the electricity sector and utilities in the State; and
 - (p) to aid and advise the State Government on any other matter referred to the State Commission by such Government;
- (3) The State Commission shall exercise its functions in conformity with the national power plan.
- 23. The provisions of sections 9, 10 and 12 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:—
 - (a) references to "Central Commission" shall be construed as references to "State Commission":

Application of certain provisions relating to Central Commission to State Commissions. (b) in sub-section (3) of section 9, the brackets and words "(including the Member ex officio)" shall be omitted.

State Advisory Committee.

- 24. (1) The State Commission may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the State Advisory Committee.
- (2) The State Advisory Committee shall consist of not more than twenty-one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the energy sector.
- (3) The Chairperson and the Members of the State Commission shall be ex officio Chairperson and ex officio Members of the State Advisory Committee.

Objects of State Advisory Committee.

- 25. The objects of the State Advisory Committee shall be to advise the Commission on---
 - (i) major questions of policy;
 - (ii) matters relating to quality, continuity and extent of service provided by the licensees;
 - (iii) compliance by licensees with the conditions and requirements of their licence;
 - (iv) protection of consumer interest; and
 - (v) energy supply and overall standards of performance by utilities.

Representation before State Commission.

26. The State Commission shall authorise any person as it deems fit to represent the interest of the consumers in all the proceedings before it.

Appeal to High Court in certain cases.

- 27. (1) Any person aggrieved by any decision or order of the State Commission may file an appeal to the High Court.
- (2) Except as aforesaid, no appeal or revision shall lie to any court from any decision or order of the State Commission.
- (3) Every appeal under this section shall be preferred within sixty days from the date of communication of the decision or order of the State Commission to the person aggrieved by the said decision or order:

Provided that the High Court may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that the aggrieved person had sufficient cause for not preferring the appeal within the said period of sixty days.

CHAPTER VI

ENERGY TARIFF

Determination of tariff by Central Commission.

- 28. The Central Commission shall determine by regulations the terms and conditions for fixation of tariff under clauses (a), (b) and (c) of section 13, and in doing so, shall be guided by the following, namely:—
 - (a) the generating companies and transmission entities shall adopt such principles in order that they may earn an adequate return and at the same time that they do not exploit their dominant position in the generation, sale of electricity or in the inter-State transmission of electricity;
 - (b) the factors which would encourage efficiency, economical use of the resources, good performance, optimum investments and other matters which the Central Commission considers appropriate;

(c) national power plans formulated by the Central Government; and

(d) such financial principles and their applications contained in Schedule VI to the Electricity (Supply) Act, 1948 as the Commission considers appropriate.

29. (1) Notwithstanding anything contained in any other law, the tariff for intra State transmission of electricity and the tariff for supply of electricity, grid, wholesale, bulk or retail, as the case may be, in a State (hereinafter referred to as the tariff), shall be subject to the provisions of this Act and the tariff shall be determined by the State Commission of that State in accordance with the provisions of this Act.

Determination of tariff by State Commission.

- (2) The State Commission shall determine by regulations the terms and conditions for the fixation to tariff, and in doing so, shall be guided by the following, namely:—
 - (a) the principles and their applications provided in sections 46, 57 and 57A of the Electricity (Supply) Act, 1948 and the Sixth Schedule thereto;
 - (b) in the case of the Board or its successor entities, the principles under section 59 of the Electricity (Supply) Act, 1948;
 - (c) that the tariff progressively reflects the cost of supply of electricity at an adequate and improving level of efficiency;
 - (d) the factors which would encourage efficiency, economical use of the resources, good performance, optimum investments, and other matter which the State Commission considers appropriate for the purpose of this Act;
 - (e) the interests of the consumers are safeguarded and at the same time, the consumers pay for the use of electricity in a reasonable manner based on the average cost of supply of energy;
 - (f) the electricity generation, transmission, distribution and supply are conducted on commercial principles;
 - (g) national power plans formulated by the Central Government;
- (3) Subject to the provisions of sub-section (4), no consumer or class of consumers shall be charged less than fifty per cent, of the average cost of supply of energy:

Provided that if the State Commission considers it necessary it may allow the consumers in the agricultural sector to be charged less than fifty per cent, subject to the condition that the charges less than the said fifty per cent, shall not be allowed after the expiry of a period of three years from the commencement of this Act.

- (4) If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under this section, the State Government shall pay the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licensee or any other person concerned to implement the subsidy provided for by the State Government.
- (5) Subject to the provisions of sub-section (3), the State Commission, while determining the tariff under this Act, shall not show undue preference to any consumer of electricity, but may differentiate according to the consumer's load factor, power factor, total consumption of energy during any specified period or the time at which the supply is required or the geographical position of any area the nature of supply and the purpose for which the supply is required.
- (6) The holder of each licence and other persons including the Board or its successor body authorised to transmit, sell, distribute or supply electricity wholesale, bulk or retail, in the State shall observe the methodologies and procedures specified by the State Commission from time to time in calculating the expected revenue from charges which he is permitted to recover and in determining tariffs to collect those revenues.
- (7) Notwithstanding anything contained in sections 57A and 57B of the Electricity (Supply) Act, 1948 no rating committee shall be constituted after the date of commencement of this Act and the Commission shall secure that the licensees comply with the provisions of their licensee regarding the charges for the sale of electricity both wholesale and retail

54 of 1948.

54 of 1948.

54 of 1948.

54 of 1948.

and for connections and use of their assets or systems in accordance with the provisions of this Act.

Reasons for deviation by Commissions.

30. Where the Commissions depart from factors specified in clause (a) to (d) of section 28 and clauses (a) to (f) of sub-section (2) of section 29, they shall record the reasons for such departure in writing.

CHAPTER VII

ACCOUNTS, AUDIT AND REPORTS

Budget of Central Commission. 31. The Central Commission shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Central Commission and forward the same to the Central Government.

Accounts and audit of Central Commission.

- 32. (1) The Central Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
- (2) the accounts of the Central Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Central Commission to the Comptroller and Auditor-General.
- (3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Central Commission under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Central Commission.
- (4) The accounts of the Central Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Central Commission and the Central Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament.

Budget of State Commission. 33. The State Commissions shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the State Commission and forward the same to the State Government.

Accounts and audit of State Commission.

- 34. (1) The State Commission shall maintain proper accounts and other relevant records and prepare and annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.
- (2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptorller and Auditor-General.
- (3) The Comptroller and Auditor-General and person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.
- (4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report

thereon shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

35. (1) The Central Commission shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

Annual report of Central Commission.

- (2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.
- 36. (1) The State Commission shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the State Government.

Annual report of State Commission

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature.

CHAPTER VIII

MISCELLANEOUS

37. The Commission shall ensure transparency while exercising their powers and discharging their functions.

Transparency in Commissions.

- 38. (1) In the discharge of its functions, the Central Commission shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing.
- sions.

 Directions by

 Central

 Government.
- (2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.
- 39. (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.

Directions by State
Government.

- (2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.
- 40. The Chairperson, Members, officers and other employees of the Commissions shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

Members, officers and employees of Central Commission to be public servants.

41. The provisions of this Act in so far as they relate to the State Commission shall not apply to the Commissions established under the Orissa Electricity Reform Act, 1995 or the Haryana State Electricity Reform Act, 1997.

Special provision relating to the Orissa Electricity Reform Act, 1995 and Haryana State Electricity Reform Act, 1997.

42. All proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Proceedings before Commission.

45 of 1860.

45 of 1860.

2 of 1974.

Protection of action taken in good faith.

43. No suit, prosecution or other legal proceedings shall lie against the Central or State Government or the Central or State Commission or any officer of Central or State Government or any Members, officer or other employees of the Central or State Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Punishment for non-compliance of orders or directions under the Act. 44. Whoever fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes, or attempts to contravene or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to rupees one lakh or, with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to rupees four thousand for every day during which the failure continues after conviction of the first such offence.

Punishment for non-compliance of directions given by a Commission.

- 45. (1) In case any complaint is filed before the Commission by any person or if the Commission is satisfied that any person has contravened any directions issued by the Commission under this Act, rules or regulations made thereunder, the Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed rupees one lakh for each contravention and in case of a continuing failure with an additional penalty which may extend to rupees six thousand for every day during which the failure continues after contravention of the first such direction.
- (2) Any amount payable under this section, if not paid, may be recovered as if it were an arrear of land revenue.

Power of seizure.

46. The Commission or any other officer not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reasons to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure 1973, in so far as it may be applicable.

2 of 1974.

Offences by companies.

47. (1) Where an offence under this Act has been committed by a company, every person who at the time, the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Nothwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
 - (b) "director", in relation to a firm, means a partner in the firm.

48. No court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by the Commission or by any other officer duly authorised by the Commission for this purpose.

Cognizance of offences.

49. Nothing contained in this act or any rule or regulations made thereunder or any instrument having effect by virtue of this Act, rule or regulations shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962.

Inconsistency in laws.

68 of 1986. 33 of 1962.

50. The Central or the State Commission may, by general or special order in wirting, delegate to any Members, officer of the Central or the State Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to settle disputes under Chapters III and V and the power to make regulations under section 55 or section 58) as it may deem necessary.

Delegation.

51. With effect from such date as the Central Government may, by notification, in the Official Gazette appoint, sub-section (2) of the section 43A of the Electricity (Supply) Act, 1948 shall be omitted:

Amendment of Act 54 of 1948.

52. Save as otherwise provided in section 49, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

Overriding effect.

53. The Central Government may give directions to a State Government as to the carrying out into execution of this Act in the State.

Power to give directions

54. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power of Central Government to

make rules.

- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (a) the salary and allowances payable to and the other conditions of service of the Chairperson and Members under sub-section (2) of section 6;
 - (b) the form and the manner in which and the authority before whom oath of office and secrecy should be subscribed under sub-section (4) of section. 6;
 - (c) the form in which and the time at which, the Central Commission shall prepare its budget under section 31;
 - (d) the form in which annual statement of accounts to be prepared by the Central Commission under sub-section (1) of section 32;
 - (e) the form and the time within which annual report should be filed under sub-section (1) of section 35;
 - (f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.
- 55. (1) The Central Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules generally to carry out the purposes of this Act.

Power of Central Commission to make regulations.

- (2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—
 - (a) the powers and duties of the Secretary under sub-section (1) of section 8;
 - (b) the salaries, allowances and other conditions of service of the Secretary, officers and other employees under sub-section (3) of section 8;
 - (c) the terms and conditions of the consultants appointed under sub-section (4) of section 8;

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- (d) the rules of procedure to be observed by the Central Commission under sub-section (1) of section 9;
- (e) the manner in which charges for energy may be determined under section 28.

Rules and regulations to be laid before Parliament. 56. Every rule made by the Central Government and every regulation made by the Central Commission under this Act shall be laid, as soon as may be after it is made before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power of State Government to make rules.

- 57. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (a) the salary, allowances and other conditions of service of the Members under sub-section (2) of section 19;
 - (b) the form and manner in which and the authority before whom the oath of office and secrecy should be subscribed under sub-section (4) of section 19;
 - (c) the form in which and the time at which, the State Commission shall prepare its budget under section 33;
 - (d) the form in which annual statement of accounts to be prepared by the State Commission under sub-section (1) of section 34;
 - (e) the form and the time within which annual report shall be furnished under sub-section (1) of section 36;
 - (f) any other matter which is to be, or may be prescribed or in respect of which provision is to be made by rules.

Power of State Commission to make regulations.

- 58. (1) The State Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—
 - (a) the duties and powers of the Secretary under sub-section (1) of section 21;
 - (b) the salary, allowances and other conditions of service of the Secretary, officers and other employees under sub-section (3) of section 21;
 - (c) the terms and conditions of consultants appointed under sub-section (4) of section 21;
 - (d) the manner in which charges for energy may be determined under subsection (2) of section 29;
 - (e) any other matter which is to be, or may be, specified.

Rules and regulations to be laid before State Legislature. 59. Every rule made by the State Government and every regulation made by the State Commission under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

60. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.
 - 61. (1) The Electricity Regulatory Commissions Ordinance, 1998 is hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

Ord. 14 of 1998.

STATEMENT OF OBJECTS AND REASONS

India's power sector is beset by problems that impede its capacity to respond to the rapidly growing demand for energy brought about by economic liberalisation. Despite the stated desire for reform and the initial measures that have been implemented, serious problems persist. As the problems of the Power Sector deepen, reform becomes increasingly difficult underscoring the need to act decisively and without delay. It is essential that the Government implement significant reforms by focussing on the fundamental issues facing the power sector, namely the lack of rational retail tariffs, the high level of cross-subsidies, poor planning and operation, inadequate capacity, the neglect of the consumer, the limited involvement of private sector skills and resources and the absence of an independent regulatory authority. Considering the paramount importance of restructuring the power sector, Government of India organised two Conferences of Chief Ministers to discuss the whole gamut of issues in the power sector and the outcome of these meetings was the adoption of the Common Minimum National Action Plan for Power (CMNPP).

- 2. The CMNPP recognised that the gap between demand and supply of power is widening and acknowledged that the financial position of State Electricity Boards is fast deteriorating and the future development in the power sector cannot be sustained without viable State Electricity Boards and imporvement of their operational performance. The CMNPP identified creation of regulatory Commission as a step in this direction and specifically provided for establishment of the Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory Commissions (SERCs). After the finalisation of the national agenda contained in CMNPP, the Ministry of Power assigned the task of studying the restructuring needs of the regulatory system to Administrative Staff College of India (ASCI), Hyderabad. The ASCI report strongly recommended the creation of independent Electricity Regulatory Commissions both at the Centre and the States.
- 3. To give effect to the aforesaid proposals, the Electricity Regulatory Commissions Bill, 1997 was introduced in the Lok Sabha on 14th August, 1997. However it could not be passed due to the dissolution of the Eleventh Lok Sabha. This has resulted in delay in establishing the Regulatory Commissions leading to confusion and misgivings in various sections about the commitment of the Government to the reforms and restructuring of the power sector. Needless to say, this has also slowed down the flow of public and private investment in power sector. Since it was considered necessary to ensure the speedy establishment of the Regulatory Commissions and as Parliament was not in session, the President promulgated the Electricity Regulatory Commissions Ordinance. .998 on the 25th day of April, 1998.
 - 4. The salient features of the said Ordinance are as follows:—
 - (a) It provides for the establishment of a Central Electricity Regulatory Commission at the Central level and State Electricity Commissions at the State levels;
 - (b) the main functions of CERC are:-
 - (i) to regulate the tariff of generating companies owned or controlled by the Central Government;
 - (ii) to regulate inter-State transmission including tariff of the transmission utilities;
 - (iii) to regulate inter-State sale of power;
 - (iv) to aid and advise the Central Government in the formulation of tariff policy.

- (c) the main functions of the SERC, to start with, shall be:-
- (i) to determine the tariff for electricity, wholesale, bulk, grid and. retail;
 - (ii) to determine the tariff payable for use of the transmission facilities;
- (iii) to regulate power purchase and procurement process of the transmission utilities, etc.
- (iv) subsequently, as and when each State Government notifies, other regulatory functions could also be assigned to SERCs.
- (d) it also aims at improving the financial health of the State Electricity Boards (SEBs) which are loosing heavily on account of irrational tariffs and lack of budgetary support from the State Governments as a result of which, the SEBs have become incapable of even proper maintenance, leave alone purposive investment. Further the lack of creditworthiness of SEBs has been a deterrent in attracting investment both from the public and private sectors. Hence, it is made mandatory for State Commissions to fix tariff in a manner that none of the consumers or class of consumers shall be charged less than fifty per cent. of the average cost of supply, it enables the State Governments to exercise the option of providing subsidies to weaker sections on condition that the state Governments through a subsidy compensate the SEBs. As regards the agriculture sector, it provides that if the State Commission considers it necessary it may allow the consumers in the agricultural sector to be charged less than fifty per cent. for a maximum period of three years from the date of commencement of the Ordinance. It also empowers the State Government to reduce the tariff further but in that case it shall compensate the SEBs or its successor utility, the difference between the tariff fixed by the State Commission and the tariff proposed by the State Government by providing budgetary allocations. Therefore, it enables the State Governments to fix any tariff for agriculture and other sectors provided it gives subsidy to State Electricity Boards to meet the loss.
 - 5. The Bill seeks to replace the said Ordinance.

New Delhi; The 16th May, 1998. P. R. KUMARAMANGALAM.

Notes on Clauses

Clause 2 defines the various expressions occurring in the Bill.

Clause 3 provides for the establishment and constitution of the Central Electricity Regulatory Commission within three months of the Bill coming into force. The CERC shall consist of a Chairperson, three Members and ex offico Member, who shall be appointed by the Central Government as per the procedure laid down.

Clause 4 provides for the conditions for appointment as Chairperson or Members of the CERC. The Members shall be persons having adequate knowledge, experience or shown capacity in dealing with problems relating to engineering, law, economics, commerce, finance or management.

Clause 5 provides for the constitution of a selection committee consisting of Member (Energy), Planning Commission, Secretary, Legal Affairs, Chairman PESB, Secretary (Power) and two other Members co-opted for this purpose. The Secretary (Power) shall be the convenor of the committee.

Clause 6 provides for the term of office, conditions of service of Chairperson and Members. This clause, *inter alia*, provides that the Chairperson and Members shall hold office for a period of five years or until the age of sixty-five years and sixty-two years respectively whichever is earlier and shall not be eligible for re-appointment at any time after the expiry of his term of appointment.

Clause 7 provides for the removal of the Chairperson and Members from office under certain circumstances. No Member of the CERC including Chairperson shall be removed from the office until a sitting Judge of the Supreme Court has carried out an investigation and forwarded a report to the President of India who may remove from office the Chairperson or Members of CERC.

Clause 8 contains provisions regarding the appointment of the Secretary, staff and consultants of the CERC.

Clause 9 contains the proceedings of the Central Commission. They shall have exclusive power to frame the regulations for the conduct of its proceedings. In case of difference of opinion among the Members of the CERC the opinion of the majority shall prevail.

Clause 10 provides that vacancies, etc., shall not invalidate the proceedings of the Central Commission.

Clause 11 provides that expenses of Central Commission shall be charged upon Consolidated Fund of India.

Clause 12 lays down the powers of CERC. It shall have powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of certain matters.

Clause 13 lays down the functions of Central Commission which, inter alia, shall be-

- (a) to regulate the tariff of generating companies owned or controlled by the Central Government;
- (b) to regulate the tariff of generating companies, other than those owned or controlled by the Central Government;
- (c) to regulate inter-State transmission of energy including tariff of transmission utilities:

- (d) to promote competition, efficiency and economy in the activities of electricity industry;
- (e) to aid and advise the Central Government in the formulation of tariff policy which shall be fair to the consumers and facilitate mobilisation of adequate resources;
- (f) to associate with the environmental regulatory agency to develop appropriate policies for environmental regulation;
 - (g) to frame guidelines in matters relating to electricity tariff;
- (h) to arbitrate or adjudicate upon disputes involving generating/transmission companies;
- (i) to aid and advise the Central Government on any other matter referred to it.

Clause 14 provides for the establishment of a Central Advisory Committee consisting of not more than thirty-one Members to represent the interest of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the energy sector. The Chairperson and Members of the Central Commission shall be ex officio Chairperson and ex officio Members of the Central Advisory Committee.

Clause 15 provides that the objects of Central Advisory Committee shall be to advise the Central Commission on major questions of policy, matters relating to quality, continuity and extent of service provided by the licensees, compliance by licensees with the condition and requirements of their licence, protection of consumer interest and energy supply and overall standards of performance.

Clause 16 provides that any aggrieved person may file an appeal to the High Court within sixty days from the date of communication of the decision or order. The High Court may entertain an appeal after the expiry of sixty days if it is satisfied that there is sufficient cause for the same.

Clause 17 provides for the establishment and incorporation of the State Commission. The SERC shall consist of maximum of three Members including the Chairperson, to be appointed by the State Government from persons (of ability, integrity and standing who have adequate knowledge relating to, engineering, finance, commerce, economics, law or management) selected by a Selection Committee constituted for the purpose.

Clause 18 provides for the constitution of Selection Committee by the State Government, consisting of a High Court Judge, Chief Secretary of the State and Chairperson or a Member of CEA.

Clause 19 provides for the term of office, salary and allowances and other conditions of service of Chairperson and Members. This clause, inter alia, provides that the Chairperson and Members shall hold office for a period of five years or until the age of sixty-five years and sixty-two years respectively and shall not be eligible for reappointment.

Clause 20 provides for the removal of the Members of SERC from office under certain circumstances. No Member of the SERC including Chairperson shall be removed from the office until a sitting Judge of the High Court of the State, as nominated by the Chief Justice of the High Court has carried out an investigation and forwarded a report to the Governor of the State who may remove from office the Chairperson or Members of SERC.

Clause 21 contains provision regarding the appointment of the Secretary, Staff and Consultants of the SERC with the approval of the State Government.

Clause 22 lays down the functions of State Commission which, inter alia, shall be:

- (i) to determine the tariff for electricity, wholesale, bulk, grid or retail and the tariff payable for use of transmission facilities, to regulate power purchase and procurement process of the transmission and distribution utilities and to promote competition, efficiency and economy in the activities of the electricity industry.
- (ii) the State Government may, by notification may confer any of the functions, inter alia, relating to regulating the investment approval for generation, transmission, distribution and supply of power to the entities within the State; to aid and advise the State Government on matters concerning electricity; to regulate the operation of the power system; to issue licences for transmission, bulk supply, distribution or supply of electricity; to regulate the working of the licensees; to require licensees to formulate perspective plans and schemes; to set standards for the electricity industry; to promote competitiveness; to lay down and enforce safety standards; to aid and advise the State Government in formulation of power policy; to collect and record information concerning generation, transmission, distribution; to adjudicate upon the disputes between the licensees and utilities to coordinate with environmental regulatory agencies.

Clause 23 provides for the application of certain provisions (clauses 9, 10 and 12) relating to Central Commission to State Commissions.

Clause 24 provides for the establishment of the State Advisory Committee consisting of a maximum of 31 Members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies. The Chairperson and Members of SERC shall be ex office Members of the Advisory Committee.

Clause 25 provides that the objects of State Advisory Committee shall be to advise the State Commission on major questions of policy, matters relating to quality, continuity and extent of service provided by the licensees, compliance by licensees with the conditions and requirements of their licence, protection of consumer interest and energy supply and overall standards of performance.

Clause 26 provides that the State Commission can authorize any person to represent the interests of the consumers in all the proceedings before it.

Clause 27 provides that any aggrieved person may file an appeal to the High Court within sixty days from the date of communication of the decision or order. The High Court may entertain an appeal after the expiry of sixty days if it is satisfied that there is sufficient cause for the same.

Clause 28 provides that the Central Commission shall determine the terms and conditions for fixation of tariff under clauses 13 (a), (b) and (c) and in doing so, shall be guided, inter alia, by the national power plans, financial principles as provided under Schedule VI to the Electricity (Supply) Act, 1948, etc.

Clause 29 provides that the State Commission shall determine the tariff for inter State transmission of electricity and the tariff for supply of electricity, grid, wholesale, bulk or retail in a State. The Sate Commission shall determine the terms and conditions for the fixation of tariff and in doing so shall be guided, inter alia, by the principles as provided in sections 46, 57 and 57A of the Electricity (Supply) Act, 1948 and Sixth Schedule thereto; in the case of Board or its successor entities, the principles under section 59 of the Electricity (Supply) Act, 1948; the interests of the consumers; national power plans, etc. No consumers or class of consumers shall be charged less than 50 per cent. of the average cost of supply of energy. The State Commission may allow the consumers in the agricultural sector to be charged less than 50 per cent. of the average cost but not for a period more than three years. If the State Government requires the grant of any subsidy to any consumer or class of consumer, it shall pay the amount to compensate the person affected by the grant of subsidy.

Clause 30 provides that the Commissions shall record in writing the reasons for deviation, if any from clauses 28(a) to (d) and 29(2) (a) to (f).

Clause 31 provides for the preparation of the budget by the Central Commission showing the estimated receipts and expenditure, and for forwarding the same to the Central Government.

Clause 32 provides for the maintenance by the Central Commission, of proper accounts and other relevant records in the prescribed form at and in consultation with the CAG. It also provides that the accounts of the Central Commission shall be audited by CAG and any person appointed by him. The accounts as certified by the CAG shall be forwarded annually to the Central Government for the purpose of laying before each House of Parliament.

Clause 33 provides for the preparation of the budget by the State Commission showing the estimated receipts and expenditure, and for forwarding the same to the State Government.

Clause 34 provides for maintenance by the State Commission, of proper accounts and other relevant records in the prescribed form at and in consultation with the CAG. It also provides that the accounts of the State Commission shall be audited by CAG or any person appointed by him. The accounts as certified by the CAG shall be forwarded annually to the State Government for the purpose of laying before State Legislature.

Clause 35 provides that the Central Commission shall prepare annual report in prescribed form, giving a summary of its activities during the previous year and forward the same to the Central Government for the purpose of laying before each House of Parliament.

Clause 36 provides that the State Commission shall prepare annual report in prescribed form, giving a summary of its activities during the previous year and forward the same to the State Government for the purpose of laying before State Legislature.

Clause 37 provides that the Commission shall ensure transparency while exercising/discharging their powers/functions.

Clause 38 provides that the Central Commission may carry out such directions as may be issued to it by the Central Government.

Clause 39 provides that the State Commission may carry out such directions as may be issued to it by the State Government.

Clause 40 provides that the Chairpersons, Members, Officers and other employees of the Commission shall be deemed to public servants.

Clause 41 provides that the provisions of the Bill shall not apply to Orissa and Haryana State Electricity Reform Acts.

Clause 42 provides that all proceedings before the Commission shall be deemed to be judicial proceedings.

Clause 43 provides that no suit, prosecution or other legal proceedings shall lie against the Central Government or the Central or State Commission for anything which is done and intended to be done in good faith.

Clause 44 provides for punishment (of imprisonment for a term which may extend to three months or with fine which may extend of Rs. 1 lakh or with both) for non-compliance of orders or directions under the Bill.

Clause 45 provides for punishment (of maximum of Rs. 1 lakh for each contravention and an additional penalty of maximum of Rs. 6,000 for every day) for non-compliance of order or directions given by the Commission.

Clause 46 provides that the Commission or any other specially authorized gazetted officer shall have the powers of seizure subject to the provisions of section 100 of Code of Criminal Procedure.

Clause 47 provides that the company which has committed an offence under this Bill shall be liable to be proceeded against and punished accordingly.

Clause 48 provides no court shall take cognizance of an offence punishable under this Bill except upon a complaint by the commission or by any other authorised gazetted officer.

Clause 49 provides that the provisions of this Bill, if any, inconsistent with any other provisions of the Atomic Energy Act, 1962 shall be invalid to the extent of inconsistency. The rights available under the Consumer Protection Act, 1996 will not be affected.

Clause 50 provides that the Central/State Commission may delegate to any Members, Officer of the Central/State Commission or any other person, such of its powers and functions (except the power to settle disputes and drawing rules and regulations) as it may deem necessary.

Clause 51 provides that sub-section (2) of section 43A of the Electricity (Supply) Act, 1948 shall be omitted from the date of the notification.

Clause 52 provides that except as otherwise provided in section 49, the provisions of this Bill shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Bill.

Clause 53 provides that the Central Government may give directions to State Government as to the carrying out into execution of this Bill in a State.

Clause 54 provides that the Central Government may by notification makes rules for carrying out the purposes of this Bill. In particular such rules may provide for salary and allowances and other conditions of Chairperson and Members, the form, manner and the authority before whom the oath of office and secrecy should be subscribed, the form in which and the time at which the Central Commission shall prepare its budget, annual statement of accounts, annual report and any other matter.

Clause 55 provides that the Central Commission may by notification makes regulations consistent with this Bill. In particular such regulations may provide for the powers and duties of the Secretary; the salaries, allowances and other conditions of service of the Secretary, officers and other employees; the terms and conditions of consultants, the rules of procedure to be observed by Central Commission.

Clause 56 provides that the rules/regulations made by the Central Government/ Central Commission shall be laid before each House of Parliament.

Clause 57 provides that the State Government by notification in the Official Gazette may make rules to carry out the provisions of this Bill. In particular such rules may provide for salary and allowances and other conditions of Members, the form, manner and the authority before whom the oath of office and secrecy should be subscribed, the form in which and the time at which the State Commission shall prepare its budget, annual statement of accounts, annual report and any other matter to be prescribed by rules.

Clause 58 provides that the State Commission may by notification makes regulations consistent with this Bill. In particular such regulations may provide for the powers and duties of the Secretary, the salaries, allowances and other conditions of service of the Secretary, officers and other employees; the terms and conditions of consultants, the rules of procedure to be observed by State Commission.

Clause 59 provides that the rules/regulations made by the State Government/State Commission shall be laid before the State Legislature.

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Clause 60 provides that if any difficulty arises in giving effect to provisions of this Bill, the Central Government may by order published in the Official Gazette makes such provisions not inconsistent with this Bill for removing the difficulty. That no such order shall be made after the expiry of two years from the date of commencement of this Act. That every such order made shall be laid before each House of Parliament.

FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to provide for the establishment of a Central Electricity Regulatory Commission. Clause 6 provides for the salary and allowances of the Chairperson and the Members. Clause 8 of the Bill provides for the appointment of Secretary, officers and other employees of the Commission and for their salary and allowances.

- 2. Clause 11 of the Bill provides that the expenses of the Central Commission including the salary and other allowances shall be charged on the Consolidated Fund of India.
- 3. The total recurring annual expenditure towards the pay and allowances of the Chairperson and the Members and other employees of CERC, office expenses and rent is estimated approximately at Rs. 5,33,92,000/- (Rupees five crores, thirty-three lakhs and ninety-two thousand only) and that for the six Union territories is estimated approximately at Rs. 3,27,36,000/- (Rupees three crores, twenty-seven lakhs and thirty-six thousand only).
- 4. The total non-recurring expenditure for accommodation and establishment including furniture, office equipment, etc., for the CERC will be approximately Rs. 6,75,00,000/- (Rupees six crores and sevety-five lakhs only) and for six Union territories, approximately Rs. 2,70,00,000/- (Rupees two crore and seventy lakhs only).
- 5. Clause 17 of the Bill provides for the establishment of State Electricity Regulatory Commissions. Clause 19 of the Bill provides for the salary and allowances of the Members. Clause 21 provides for the appointment of Secretary, officers and other employees of the State Commission and for their salary and allowances. These expenses will be met by the State Government.
- The Bill does not involve any other expenditure recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 54 of the Bill empowers the Central Government to make rules to provide for, among other matters, salaries and allowances and other conditions of service of the Chairperson and Members of the CERC; the form, manner and the authority before whom oath of office and secrecy should be subscribed; the form in which and the time at which the Central Commission shall prepare its budget; the form in which annual statement of accounts shall be prepared by Central Commission; the form and time within which annual reports are to be made to the Central Government.

- 2. Clause 55 of the Bill empowers the Central Commssion to make regulations to provide for the powers and duties of the secretary; salaries, allowances and other conditions of service of the secretary, officers and other employees; the terms and conditions of the consultants; the rules of procedure to be observed by the Central Commission and/or the manner in which charges for energy may be determined.
- 3. Clause 57 of the Bill empowers the State Government to make rules to provide for the salary, allowances and other conditions of service of the Members, the form and manner in which the authority before whom the oath of office and secrecy should be subscribed; the form in which and the time at which the State Commission shall prepare its budget; the form in which annual statement of accounts to be prepared by State Commission; the manner and form in which annual reports are to be made to the State Government.
- 4. Clause 58 of the Bill empowers the State Commission to make regulations to provide for the powers and duties of the secretary; salaries, allowances and other conditions of service of the secretary, officers and other employees; the terms and conditions of the consultants; the manner in which charges for energy may be determined.
- 5. The rules and regulations will be laid before both Houses of Parliament where such rules and regulations are make by the Central Government or the Central Commission, as the case may be, Similarly, rules and regulations made by the State Governments and the State Commissions will be laid before the State Legislature.
- 6. Clause 60 empowers the Central Government to issue orders within a period of two years from the date of commencement of the Bill to be published in the Official Gazette, to make such provisions not inconsistent with provisions of the Bill to remove any difficulty in giving effect to the provisions of the Bill. Every such order shall be laid before each House of Parliament.
- 7. The matters in respect of which rules and regulations may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them.

Memoranndum explaining the modifications contained in the Bill to replace the Electricity Regulatory Commissions Ordinance, 1998

The Electricity Regulatory Commissions Bill, 1998 which seeks to repeal and replace the Electricity Regulatory Commissions Ordinance, 1998 proposes to make the following modifications in the provisions contained in the said Ordinance:—

It is proposed to make the following changes through the proposed Bill:

Clause 2

A new definition "licensee" has been added.

Clause 12

The following has been added:-

Sub Clause (g) review of the decisions, directions and orders.

Clause 13(c) (i) to (iii) has been shifted to clause 2 which is as follows:—

"inter-state transmission" includes:--

- (i) the conveyance of energy by means of a main transmission line from the territory of one State to the territory of another State;
- (ii) the conveyance of energy across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of energy;
- (iii) the transmission of energy within the territory on a system built, owned, operated, maintained or controlled by a central transmission utility or by any person under the supervision and control of a central transmission utility.

Clause 17

The following has been added:

Sub Clause 9

The Chairperson or any member of the State Commission shall not hold any other office;

Clause 22 Sub-clause 2(a):

The word "power" has been replaced by "electricity".

Clause 28, sub-clause (d) has been revised as follows:—

(d) such financial principles and their application contained in Schedule VI to the Electricity (Supply) Act, 1948 as the commission consider appropriate.

Clause 29 Sub-clause (3):

The words "subject to the provisions of sub-section (4), has been added before the words "No consumer".

Clause 29

The following clause has been added after sub-clause (6).

(7) Notwithstanding anything contained in Sections 57A and 57B of the Electricity (Supply) Act, 1948 no rating committee shall be constituted after the date of commencement of this Act and the Commission shall secure that the licensees comply with the provisions of their licence regarding the charges for the sale of electricity both wholesale and retail and for connections and use of their assets or systems in accordance with the provisions of this Act.

Clauses 38 and 39 have been revised as follows:---

- 38. (1) In the discharge its functions, the Central Commission shall be guided by such directions in matters of policy involving public interests as the Central Government may give to it in writing.
- (2) If any question arises as to whether any such directions relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.
- 39. (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interests as the State Government may give to it in writing.
- (2) If any question arises as to whether any such directions relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.

The said modifications and insertions are clarificatory in nature.

Bill, No. 47 of 1998

A Bill further to amend the Beedi Workers Welfare Cess Act, 1976.

Be it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

Short title and commencement.

- 1. (1) This Act may be called the Beedi Workers Welfare Cess (Amendment) Act, 1998.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 3 of Act 56 of 1976.

2. In the Beedi Workers Welfare Cess Act, 1976, in section 3, in sub-section (1), for the words "not be less than ten paise or more than fifty paise", the words "not be less than fifty paise or more than five rupees" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Beedi Workers Welfare Cess Act, 1976 (56 of 1976) and the Beedi Workers Welfare Fund Act, 1976 (62 of 1976) have been enacted to ameliorate the living conditions and provide welfare measures to beedi workers. The former Act provides for levy as a duty of excise by way of cess on manufactured beedis at a rate of not less than ten paise or more than fifty paise per thousand. The proceeds are being utilised to finance the Welfare Fund for Beedi Workers. Initially, the cess was fixed at twenty-five paise per kilogram of tobacco issued from warehouses for manufacture of beedis. The cess for financing the Beedi Workers Welfare Fund could not be collected under the Beedi Workers Welfare Cess Act, 1976 with effect from 1st March, 1979 due to exemption granted by the Finance Act for 1979-80. Thereafter, the Beedi Workers Welfare Cess Act, 1976 was amended in 1981 to provide levy of not less than ten paise and not more than fifty paise per thousand manufactured beedis.

- 2. After amendment of the Beedi Workers Welfare Cess Act, 1976, the cess was levied at the rate of ten paise per thousand manufactured beedis, but was increased to thirty paise per thousand on 1st March, 1987 to meet the increasing cost of administering the various welfare measures under the Fund. It was subsequently increased to fifty paise per thousand manufactured beedis with effect from 17th October, 1995. In order to continue and expand welfare measures for persons employed in beedi establishments, it is proposed to amend the Beedi Workers Welfare Cess Act, 1976 so as to increase the minimum rate of cess from ten paise to fifty paise and maximum rate of cess from fifty paise to five rupees per thousand manufactured beedis, as the Central Government may, from time to time, fix.
 - 3. The Bill seeks to achieve the above objectives.

New Delhi; The 18th May, 1998. S. N. JATIYA.

FINANCIAL MEMORANDUM

The existing section 3 of the Beedi Workers Welfare Cess Act, 1976 provides for the purposes of the Beedi Workers Welfare Fund Act, 1976, levy of a duty of excise on manufactured beedis at such rates which shall not be less than ten paise or more than fifty paise per thousand manufactured beedis as the Central Government may, from time to time, fix by way of notification in the Official Gazette. Incidentally, it may be mentioned that section 3 of the Beedi Workers Welfare Cess Act, 1976 envisages that the said cess shall, after deducting the cost of collection and after due appropriation made by Parliament in that behalf, be credited to the Beedi Workers Welfare Fund under that Act. The Beedi Workers Welfare Fund Act is complementary to the Beedi Workers Welfare Cess Act and the machinery under the Beedi Workers Welfare Fund Act is, as provided in section 8 of that Act, to be utilised for the purposes of the Beedi Workers Welfare Cess Act also.

- 2. The present rate of cess has been fixed at the rate of fifty paise per thousand manufactured beedis which resultantly generates a corpus of about Rs. 21 crores every year. This amount has become grossly inadequate to sustain even the existing level of assistance for the various schemes under the Beedi Workers Welfare Fund Act. In order to maintain the existing level of services made available to the beedi workers under the Beedi Workers Welfare Fund Act, and also to increase the scale of benefits under certain schemes, it would be necessary to create a corpus of between Rs. 40—50 crores per year to meet the requirements of the welfare fund. To achieve this objective, it is proposed to enhance the rate of cess up to five rupees per thousand manufactured beedis. Although the provision for a higher ceiling is made in order to avoid frequent amendments of the Beedi Workers Welfare Cess Act, the rate of cess to be notified would be kept at one rupee per thousand manufactured beedis, for the present. This rate of cess of one rupee per thousand manufactured beedis would result in realisation of receipt of the order of around Rs. 42 crores per year at the current level of production of the beedis to make the fund viable.
- 3. The cess on manufactured beedis will have to be collected from all over the country by the Central Excise Department. A collection charge of one per cent. is proposed to be paid to the Central Excise Department. For the present, the rate of cess is proposed to be fixed at one rupee per thousand beedis manufactured and on this basis, the estimated total collection of cess per year is likely to be Rs. 42 crores per year and the collection charges that would be payable will be about Rs. 42 lakks per year.
- 4. The provisions of the Bill do not involve any other expenditure whether of recurring or non-recurring nature.

S. GOPALAN, Secretary-General.